Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

FERRY PASS UNITED METHODIST CHURCH,

Petitioner,

v.

VIRGINIA M. CARNESI, PENSACOLA DISTRICT OF THE ALABAMA WEST FLORIDA CONFERENCE OF THE UNITED METHODIST CHURCH, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, AND CHET HARRISON,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI

WILLIAM R. MITCHELL
Counsel of Record
STEPHEN E. BOLTON
HOOK, BOLTON, MITCHELL, KIRKLAND & MCGHEE, P.A.
3298 Summit Boulevard
Suite 22 – Jefferson Park
Pensacola, Florida 32503
(850) 433-0809

Attorneys for Petitioner, Ferry Pass United Methodist Church

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

1. Does the First Amendment prohibit judicial inquiry into a church's resolution of employee disputes, such as under state anti-discrimination laws, where church policy provides a process for reviewing such disputes?

LIST OF PARTIES

All parties to the proceeding in the Supreme Court of Florida, which rendered the judgment sought to be reviewed by this Court, are named in this Petition.

CORPORATE DISCLOSURE STATEMENT

Ferry Pass United Methodist Church is a Florida not-for-profit corporation. Ferry Pass United Methodist Church has no parent corporation, and there is no publicly held company that owns ten percent or more of the corporation's stock.

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PETITION FOR WRIT OF CERTIORARI

Ferry Pass United Methodist Church respectfully submits this Petition for a Writ of Certiorari to review the Order of the Supreme Court of Florida in this case.

OPINIONS BELOW

The Order (App. 11-14) and Final Judgment (App. 15-16) of the Circuit Court of Escambia County, Florida are both unreported. The Order contains a brief Opinion. (App. 11) The Opinion of the District Court of Appeal, First District, State of Florida, is reported at 770 So.2d 1286. (App. 6-10) The Opinion of the Supreme Court of Florida is reported at 826 So.2d 954. (App. 1-4)

BASIS FOR JURISDICTION

The Ferry Pass United Methodist Church moved for summary judgment on the grounds judicial review of the claims made in Virginia Carnesi's complaint would violate the First Amendment's establishment clause and free exercise clause. (App. 20-21) The Circuit Court of Escambia County, Florida, granted the Church's motion (App. 11-14), as well as similar motions filed by Respondents the Pensacola District of the Alabama West Florida United Methodist Conference and the Alabama West Florida United Methodist Conference. A Final Judgment to that effect was entered on November 19, 1999. (App. 15-16) An appeal as of right was taken by Virginia Carnesi to the District Court of Appeal, First District, State of Florida, and that Court entered an Order affirming the ruling of the Circuit Court of Escambia County. (App. 6-10) Virginia

Carnesi then sought discretionary review in the Supreme Court of Florida, and this case was accepted for review.

On March 26, 2002, the Supreme Court of Florida issued an Order directing that cause be shown why it should not issue an opinion in this case consistent with its then recent rulings in two separate cases. (App. 5) After submission of additional briefs by the parties here to the Supreme Court of Florida, the Court issued an Opinion on June 20, 2002, quashing the decision of the District Court of Appeal, First District, and directing that this case be remanded for further proceedings. (App. 1-4) The Pensacola District of the Alabama West Florida Conference of the United Methodist Church (App. 37-38) and the Alabama West Florida United Methodist Conference (App. 39-45) timely moved the Supreme Court of Florida for rehearing of its Opinion. On September 11, 2002, the Supreme Court of Florida denied both Motions for Rehearing. (App. 17) This Court's jurisdiction is now invoked under Title 28, United States Code, section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

Section one of the Fourteenth Amendment states:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

STATEMENT OF PERTINENT FACTS, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW

Respondent Virginia Carnesi (hereinafter "Ms. Carnesi") filed suit against Petitioner, Ferry Pass United Methodist Church (hereinafter the "Church") based on alleged violations of Florida law, both statutory and common law. (App. 22-36) The factual core of her claims is that she was subject to unwelcome advances of a sexual nature by Respondent Chester Harrison (hereinafter "Mr. Harrison"). (App. 23-24) Mr. Harrison was a church member who volunteered on the Church's Pastor-Parish Relations committee. Ms. Carnesi was employed as a secretary by the Church at the time of the events described in her suit. She claims the Church is liable for sexual discrimination or harassment under Chapter 760, Florida Statutes, because of Mr. Harrison's alleged actions during the course of her employment, and Ms. Carnesi claims the Church is also liable for the battery, assault,

and false imprisonment allegedly committed upon her by Mr. Harrison. (App. 22-36)

The Church moved for summary judgment in the Circuit Court of Escambia County, Florida, on the grounds that the First Amendment's establishment clause and free exercise clause preclude judicial resolution of the claims raised by Ms. Carnesi. (App. 20-21) The Church's Motion for Summary Judgment, as well as similar motions filed by Respondents the Pensacola District of the Alabama West Florida United Methodist Conference and the Alabama West Florida United Methodist Conference, were granted by the Circuit Court. In its ruling, the court relied on a written opinion by an intermediate Florida appellate court.[1] (App. 11) A Final Judgment was then entered in favor of the Church, the District, and the Conference on all counts of the Complaint. (App. 15-16)

Ms. Carnesi took an appeal of the Final Judgment entered against her. In affirming the ruling of the Circuit Court, the District Court of Appeal, First District, found that:

> The trial court granted the church defendants' motions for summary judgment on the authority of *Doe v. Evans*, 718 So.2d 286 (Fla. 4th DCA 1998), *rev. granted*, 735 So.2d 1284 (Fla. 1999).

---

[1] The case relied upon was *Doe v. Evans*, 718 So.2d 286 (4th DCA 1998), *rev'd*, 814 So.2d 370 (Fla. 2002). This case was also relied upon by the District Court of Appeal, First District, in the initial appeal of this case. *Evans* and a companion case, *Malicki v. Doe*, were later the subjects of written Opinions by the Supreme Court of Florida. The *Malicki* and *Evans* opinions were the basis for the decision sought to be appealed here.

> *Evans* involves claims of breach of fiduciary duty, negligent hiring, supervision, retention, and outrage based upon a pastor's sexual relationship with a parishioner. The *Evans* court concluded that all of the claims were barred by the excessive entanglement doctrine of the First Amendment because the determination of Doe's claims would involve excessive governmental entanglement with religion.
>
> Similarly, in the instant case, a determination of Carnesi's claims – which are based upon the actions of a volunteer rather than another employee – will require a secular court to review and interpret church law, policies, and practices to determine whether an agency relationship existed between Harrison, the PPRC, and the church defendants, and whether the church defendants can be held liable for Harrison's actions. We believe that, as in *Evans*, this examination would violate the First Amendment's excessive entanglement doctrine. We therefore affirm.

(App. 6-10); *Carnesi v. Ferry Pass United Methodist Church*, 770 So.2d 1286, 1287 (1st DCA 2000), *rev'd*, 826 So.2d 954 (Fla. 2002). Ms. Carnesi then sought discretionary review in the Supreme Court of Florida, and review of her case was granted by that Court.

After the Supreme Court of Florida agreed to review the ruling in this case, it issued opinions in the *Malicki* and *Evans* cases, which were then pending before that Court.[2] The *Malicki* case contained the more detailed

[2] These cases generally raised the same First Amendment issues, but neither case dealt with a church employee like Ms. Carnesi.

analysis of the First Amendment. In *Malicki*, the Supreme Court of Florida wrote:

> The question unanswered thus far by the United States Supreme Court is how far the religious autonomy principle of *Kedroff* and *Serbian E. Orthodox Diocese* may be extended to bar the adjudication of a third-party tort claim that calls into question a religious institution's acts or omissions.

Malicki v. Doe, 814 So.2d 347, 357 (Fla. 2002).[3] After reviewing the split of authority which exists on this issue, the Court determined it would:

> . . . reject the contention that the First Amendment may be invoked to bar the adjudication of this dispute because this case is not an internal church matter. Rather, this is a dispute between church officials and two parishioners who allege that they were injured as a result of the negligence of the church officials.
>
> A law establishing standards of conduct does not implicate the Free Exercise Clause unless adherence to those standards interferes with religious belief or activity. *See Lukumi Babalu Aye*, 508 U.S. at 532, 113 S.Ct. 2217. Thus, the "threshold inquiry is whether there is a conflict between conduct that is required by law and conduct that

[3] The Supreme Court of Florida noted that significant doctrinal uncertainty exists in this area of First Amendment law, as the United States Supreme Court cases offer limited guidance. *Malicki v. Doe*, 814 So.2d 347, 357 n. 7 (Fla. 2002).

is prohibited by religious principles." *Smith v. O'Connell*, 986 F.Supp. at 78.

Malicki v. Doe, 814 So.2d 347, 360 (Fla. 2002).

The Supreme Court of Florida then directed the Petitioner and Respondents here to show cause why this case should not be decided consistent with the Opinions issued by it in *Evans* and *Malicki*. (App. 5) After briefing by the parties, the Supreme Court of Florida issued a written Opinion quashing the Opinion of the District Court of Appeal, First District, in this case in light of its Opinions in *Evans* and *Malicki*. (App. 1-4); *Carnesi v. Ferry Pass United Methodist Church*, 826 So.2d 954 (Fla. 2002). Motions for rehearing were timely made (App. 37-45), but they were denied. (App. 17)

ARGUMENT IN SUPPORT OF GRANTING WRIT

I. THE WRIT SHOULD BE GRANTED BECAUSE TO ALLOW A JUDICIAL INQUIRY INTO THE PROPRIETY OF RELIGIOUS TEACHINGS, EVEN THOUGH THEY AFFECT A SECULAR CHURCH EMPLYOEE, WILL RESULT IN EXCESSIVE ENTANGLEMENT WITH RELIGION AND WILL INFRINGE THE RIGHT TO FREEDOM OF ASSOCIATION.

This case involves whether the rights of a religious group to come together to worship and conduct their internal affairs in the manner deemed appropriate by their church as a governing body should be subject to an invasive and searching governmental inquiry, in particular by the courts. Specifically, this case addresses whether judicial inquiry into the very heart of the Methodist

discipline is constitutionally appropriate. The United Methodist Church is an hierarchical institution, and certain matters of internal governance and discipline are accomplished at the individual church level by a Pastor-Parish Relations Committee in accordance with the teachings of the Book of Discipline of the United Methodist Church. (App. 50-54) By applying the rule of law to church doctrine expressed in the Book of Discipline, the civil court system would impermissibly infringe upon the freedom of the United Methodist Church to act in a manner it deems appropriate from an ecclesiastical perspective when addressing the complaints of a church employee.

If the civil courts are to avoid an excessive entanglement with religion here, then it must be recognized that the Church has policies for dealing with internal church grievances, including employment issues, which are prescribed by the Book of Discipline. (App. 52-54) While these methods may not be viewed as consistent with the practice in the secular world, they cannot be required by the secular world to be consistent.[4] To do so would violate the very constitutional provision intended both to insure a separation of church and state and to protect the freedom to associate. Submitting the Church's decision-making process here to review by a civil tribunal would destroy the constitutionally mandated separation between church and

[4] Indeed, this tension was recognized by an intermediate Florida appellate court in one of the cases decided by the Supreme Court of Florida and relied upon to reverse the ruling in this case. *Doe v. Evans*, 718 So.2d 286 (4th DCA 1998), *rev'd*, 814 So.2d 370 (Fla. 2002) (First Amendment prohibits an inquiry into church law, policies, or practices, with the possible exception of clear criminal conduct).

state[5] and it would also infringe upon the rights of the group freely to associate.

It is important here that the Court has recognized the First Amendment's corollary right of freedom of association may be implicated when the freedom of a group to come together to worship is imperiled by governmental action. Free exercise of religion and freedom of association under the First Amendment are not mutually exclusive concepts. Rather, they are inter-related, and, in an appropriate case, each freedom must be taken into account in examining the potential for inappropriate governmental intrusion.[6] This Court's recent ruling in this area strongly suggest it is simply not the role of the courts to review and pass judgment upon the values and beliefs held by an organization, and this rationale should be particularly applicable to a religious organization.

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[5] *See NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979) (noting that "very process of inquiry leading to findings and conclusions" which would result from NLRB's attempt to regulate the conditions of labor by exercising jurisdiction over lay faculty members of church affiliated schools would impinge on rights guaranteed by the religion clauses); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710-13 (1976) (recognizing that exception to the principle limiting civil court's role in resolving religious controversy which also incidentally affects civil rights could undermine general rule that First Amendment prohibits civil inquiry into such controversies – in other words, that the exception runs the risk of eliminating the rule).

[6] *See Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 882 (1990) (rejecting First Amendment protection for claim unconnected with communicative activity and involving only individual conduct which is otherwise criminally prohibited, but noting the related associational aspect of religious expression, which is itself subject to First Amendment protection).

In *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), the Court reviewed a New Jersey statute prohibiting discrimination on the basis of sexual orientation. In addressing this issue, the First Amendment freedoms of a private organization had to be balanced against New Jersey's interest in eliminating discrimination. It was first determined that New Jersey's law, at least as it related to prohibition of discrimination against homosexuals, did not serve a compelling state interest.[7] This Court then held that the New Jersey statute would violate the First Amendment rights of the Boy Scouts of America if the Boy Scouts were required by the law to permit a homosexual male to serve as an assistant scoutmaster of a New Jersey Boy Scout troop. *Id.* at 656-59.

This Court recognized that actions of local governments which may unconstitutionally burden First Amendment freedoms can take many forms. The specific form of intrusion cited in *Dale* was an impermissible intrusion into an association's internal structures or affairs, which there involved requiring a group to accept members it did not desire to accept. *Dale*, 530 U.S. at 648. Here, the intrusion would be requiring the Church (and indeed all Methodist churches) to conform its doctrinal teachings to secular law and submit the manner of internal church governance set forth in the Book of Discipline to judicial scrutiny.[8]

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[7] See discussion at note 9 *infra*.

[8] Speculation by the courts regarding theoretical entanglement issues in resolving particular disputes should not be encouraged. Rather, the representations of traditional religious organizations should be accepted without detailed inquiry. This Court noted that it defers

(Continued on following page)

This Court has been willing to protect employees from government regulations related to the terms and conditions of employment which would require them to compromise their religious beliefs. In *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829 (1989), the Court again refused to require an employee to choose between religious beliefs and the ability to receive unemployment benefits. In that case, Mr. Frazee did not even claim to be a member of a particular Christian sect, but his profession of religious beliefs was deemed sufficient to allow him to collect unemployment compensation when he was discharged from his job for refusing to work on Sunday. Certainly, the desire of a Methodist Church as an employer to work through problems experienced by its employees in a fashion consistent with the Methodist Book of Discipline should be granted the same recognition as Mr. Frazee's desire not to work on Sunday.[9]

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both to an association's assertion regarding the nature of its expression and the association's views on what would impair its expression. *Boy Scouts of America v. Dale*, 530 U.S. 640, 653 (2000).

[9] The Court did note that sufficiently compelling state interests may exist to override a claim to free exercise of religion. *Frazee*, 489 U.S. at 835. While the government's interest in eradicating sexual harassment is certainly important, it is not compelling in this instance. *See, e.g. Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000) (state employee is barred from suing state for age discrimination where Congress had no evidence age discrimination by the states rose to the level of a constitutional violation when Congress enacted age discrimination in employment act); *Powell v. Stafford*, 859 F.Supp. 1343 (D. Colo. 1994) (government's interest in eradicating employment discrimination is not compelling viewed in light of the fundamental right of a church to determine who can be trusted with the spiritual functions of the church). The Supreme Court of Florida likewise has recognized that religious rights can override the regulatory interests of the state, even where the interests of a minor are involved. *Public Health Trust of*

(Continued on following page)

II. THE WRIT SHOULD BE GRANTED BECAUSE THE CHURCH'S LIABILITY UNDER A LEGISLATIVELY CREATED CAUSE OF ACTION CANNOT BE SUPPORTED HERE IN THE ABSENCE OF A COMPELLING STATE INTEREST.

In *Malicki*,[10] the Supreme Court of Florida addressed an alleged sexual assault by a member of the clergy against both a child and an adult parishioner. It was claimed there that the church was negligent in its hiring and supervision of Malicki based upon certain information the church allegedly knew or should have known about Malicki's propensities. The Supreme Court of Florida determined the church could not be shielded from traditional common law tort claims under the First Amendment to the United States Constitution. The Court specifically noted that the controversy in *Malicki* did not hinge on any internal church matter. Rather, the dispute was between church officials and two parishioners who alleged negligence. *Malicki v. Doe*, 814 So.2d 347, 360 (Fla. 2002). There was no indication there that any sincerely held religious beliefs would in any way be impacted by the claims made in *Malicki*. *Id.*

Dade County v. Wons, 541 So.2d 96 (Fla. 1989) (individual's decision to decline life saving medical treatment was supported by constitutional religious rights and was not overridden by state's interest in protecting individual's minor children).

[10] The *Evans* case will not be addressed separately, as the rationale expressed by the Florida Supreme Court in *Evans* does not appear to have any significance to the issues presented here which is different from the *Malicki* decision. *See Doe v. Evans*, 814 So.2d 370 (Fla. 2002).

In Florida, there is no common law cause of action for sexual harassment in the workplace. *City of Miami Beach v. Guerra*, 746 So.2d 1159 (Fla. 3rd DCA 1999); *Castleberry v. Edward M. Chadbourne, Inc.*, 810 So.2d 1028 (Fla. 1st DCA 2002). Like most other states, Florida has adopted a statutory scheme of liability for workplace discrimination and harassment, and these provisions are contained in Chapter 760, Florida Statutes. The remedy available for sexual harassment in the workplace is wholly statutory. The legislative scheme is intended to abrogate traditional tort law principles which might otherwise preclude the application of *respondeat superior* or other traditional agency principles under circumstances where an agent or servant most definitely was not acting in the interest of the principal or master. *See Malicki v. Doe*, 814 So.2d 347, 364 n. 18 (Fla. 2002).

Counts I and II of Ms. Carnesi's Complaint against the Church are based on alleged violations of Chapter 760, Florida Statutes. (App. 22-31) If Ms. Carnesi is allowed to proceed pursuant to this statutory scheme then a court would be invited to inquire into the religious beliefs found in the Book of Discipline of the Methodist Church and, in particular, how those beliefs and teachings affect the Church's management of and dealings with Church employees. A legislative scheme for liability should not be used by the courts to delve into the fundamental doctrine of the Methodist Church to review a decision made by the Church in an employment matter, particularly where no compelling state interest exists. To do so will violate the

protections afforded by the First Amendment.[11] *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979) (noting that "very process of inquiry leading to findings and conclusions" which would result from NLRB's attempt to regulate the conditions of labor by exercising jurisdiction over lay faculty members of church affiliated schools would impinge on rights guaranteed by the religion clauses); *Powell v. Stafford*, 859 F.Supp. 1343, 1346 (D. Colo. 1994) (the more pervasively religious an institution, the less religious an employee's role needs to be to risk First Amendment infringement by application of employment anti-discrimination laws).

III. THE WRIT SHOULD BE GRANTED TO CLARIFY FIRST AMENDMENT LAW IN THIS AREA.

Both the trial court and an intermediate appellate court found the facts of this case, which were presented and considered in the context of the Methodist Church, suggested the dispute between the parties should be handled by the Church through its process for internal governance and not by the courts. Each court found that a detailed judicial inquiry into the teachings of the Methodist faith, as expressed in the Book of Discipline, would result in an impermissible involvement by the courts in internal church affairs. A majority of the Supreme Court of

[11] The remainder of the counts in Ms. Carnesi's Complaint are based on common law causes of action. (App. 31-36) If the Church's actions here are to be reviewed by the civil courts, the Church should be answerable only for these traditional tort claims and not for any alleged violations of a legislatively created scheme of liability.

Florida disagreed, although the Court noted the lack of guidance provided by the decisions of this Court in this area. But, the Chief Justice and another Justice dissented based on their belief First Amendment principles would be compromised by the majority decision. (App. 2-3); *Carnesi v. Ferry Pass United Methodist Church*, 826 So.2d 954, 366-70 (Fla. 2002).

By inquiring into the policies and practices of the Methodist Church, as those policies and practices are expressed in the Book of Discipline and carried out by a Pastor-Parish Relations committee, a civil court would of necessity pass upon the doctrinal teachings of the Methodist Church. The hierarchical organization of the Methodist Church extends its teachings with respect to a Pastor-Parish Relations committee and the committee's governance of the Church to dealings with Church employees. Based upon the constitutional requirement of separation of church and state, the Church should be left to address these issues in a manner which comports with the teachings of the Methodist Church as expressed in the Book of Discipline. For a civil court to review and comment upon and, in essence, approve or disapprove of the teachings contained in the Book of Discipline, would result in an excessive entanglement with religion. Absent a compelling state interest, the risk of excessive entanglement with religion and intrusion upon the freedom of association posed by such review cannot constitutionally be permitted. This Court should take this opportunity to provide clarification in this area of First Amendment law.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

WILLIAM R. MITCHELL
Counsel of Record

STEPHEN F. BOLTON

HOOK, BOLTON, MITCHELL,
KIRKLAND & MCGHEE, P.A.
3298 Summit Boulevard
Suite 22 – Jefferson Park
Pensacola, Florida 32503
(850) 433-0809

Attorneys for Petitioner,
Ferry Pass United
Methodist Church

Supreme Court of Florida

No. SC00-2579

VIRGINIA M. CARNESI,
Petitioner,

vs.

FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT OF THE ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and CHET HARRISON, individually and as Past Parish Relations Committee Chairman,
Respondents.

[June 20, 2002]

PER CURIAM.

We have for review *Carnesi v. Ferry Pass United Methodist Church,* 770 So.2d 1286 (Fla. 1st DCA 2000), which cited as controlling authority *Doe v. Evans,* 718 So.2d 286 (Fla. 4th DCA 1988), [sic] *quashed,* 814 So.2d 370 (Fla. 2002), which was then pending review in this Court. We have jurisdiction. *See* art. V, § 3(b)(3), Fla. Const.; *Jollie v. State,* 405 So.2d 418 (Fla. 1981). On March 26, 2002, we entered an order directing the parties to show cause why the decision should not be quashed in light of our decisions in *Doe v. Evans,* 814 So.2d 370 (Fla. 2002), and *Malicki v. Doe,* 814 So.2d 347 (Fla. 2002).

Upon review of the responses to the March 26, 2002, order, the Court has determined that it should remand the case in light of our opinions in *Evans* and *Malicki.* Accordingly, the First District's decision in this case is quashed

and this matter is remanded for proceedings consistent with our opinions in *Evans* and *Malicki*.

It is so ordered.

SHAW, ANSTEAD, PARIENTE, LEWIS and QUINCE, JJ., concur.

WELLS, C.J., dissents with an opinion.

HARDING, J., dissents with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

WELLS, C.J., dissenting.

I do not agree that this case should be quashed and remanded in light of *Doe v. Evans,* 814 So.2d 370 (Fla. 2002), and *Malicki v. Doe,* 814 So.2d 347 (Fla. 2002). I recognize that the district court cites to *Evans* in its opinion, and the majority of this Court quashed the Fourth District Court of Appeal's decision in *Evans*.

However, the issues in the present case involve the authority which the church conferred upon volunteers, which the district court's majority correctly concluded "will require a secular court to review and interpret church law, policies and practices to determine whether an agency relationship existed." This is indisputably correct, and I do not believe the decision in *Malicki* or *Evans* rendered it incorrect.

I would discharge jurisdiction. In this way a correct decision can remain in effect.

Moreover, I believe the majority's decision is confusing when it says, "[t]his matter is remanded for proceedings

consistent with our opinions in *Evans* and *Malicki.*" I do not understand what either the district court or the trial court is to do. I do not know whether this is intended to be a signal as to what to do about the agency issue or whether the lower courts are still free to find that they should not delve into church law and policy on the agency issue. I do not know on what basis the agency issue is to be decided. There was no agency issue in respect to the perpetrator of the sexual assault in *Malicki* or the person allegedly romantically involved in *Evans.*

HARDING, J., dissenting.

Based on the reasons set forth in *Malicki v. Doe,* 814 So.2d 347, 367-70 (Fla. 2002) (Harding, J., dissenting), and *Doe v. Evans,* 814 So.2d 370, 381-83 (Fla. 2002) (Harding, J., dissenting), I would approve the decision of the court below. Also, I join in Chief Justice Wells' concerns that the majority opinion creates considerable confusion and offers little guidance to the trial court on remand.

Application for Review of the Decision of the District Court of Appeal – Certified Direct Conflict of Decisions

Firs [sic] District – Case No. 1D99-4333

(Escambia County)

Troy A. Rafferty and Timothy M. O'Brien of Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A., Pensacola, Florida,

for Petitioner

William R. Mitchell and Stephen F. Bolton of Hook, Bolton, Mitchell, Kirkland & McGhee, Pensacola, Florida, on behalf of Ferry Pass United Methodist Church; Eric D.

Stevenson and Michael W. Kehoe of Fuller, Johnson & Farrell, P.A., Pensacola, Florida, on behalf of Pensacola District of the Alabama West Florida United Methodist Conference; and Kathy J. Maus, Kim E. Wells, and Michael G. Haire, Jr., of Butler Burnette Pappas LLP, Tallahassee, Florida, on behalf of Alabama West Florida United Methodist Conference,

Respondents

Peter A. Miller of Conroy, Simberg & Ganon, Coral Gables, Florida; and Robert S. Glazier, Miami, Florida,

for Church Mutual Insurance Company and Miami Shores Presbyterian Church, Amici Curiae

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Supreme Court of Florida

TUESDAY, MARCH 26, 2002

CASE NO.: SC00-2579
Lower Tribunal No.: 1D99-4333

VIRGINIA M. CARNESI	vs.	FERRY PASS UNITED METHODIST CHURCH, ET AL.
Petitioner(s)		Respondent(s)

On the court's own motion, the respondents are directed to show cause by April 10, 2002, why this Court should not quash the opinion being reviewed pursuant to our decisions in *Doe v. Evans,* 27 Fla. L. Weekly S229 (Fla. Mar. 14, 2002); and *Malicki v. Doe,* 27 Fla. L. Weekly S234 (Fla. Mar. 14, 2002). Petitioner may serve her reply on or before April 22, 2002.

A True Copy
Test:

/s/ Thomas D. Hall [SEAL]
Thomas D. Hall
Clerk, Supreme Court

tc
Served:

TROY A. RAFFERTY	TIMOTHY M. O'BRIEN
WILLIAM R. MITCHELL	STEPHEN F. BOLTON
ERIC DUANE STEVENSON	MICHAEL W. KEHOE
W.H.F. WILTSHIRE	KIM E. WELLS
KATHY J. MAUS	J. PATRICK FITZGERALD
JAMES F. GILBRIDE	ROBERT S. GLAZIER
ADAM D. HOROWITZ	PETER A. MILLER

CORRECTED COPY 12/01/00

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

VIRGINIA M. CARNESI,

Appellant,

v.

FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and CHET HARRISON, individually and as Pastor Parish Relations Committee Chairman,

Appellees.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D99-4333

Opinion filed November 16, 2000.

An appeal from the Circuit Court for Escambia County. Nickolas P. Geeker, Judge.

Troy A. Rafferty of Levin, Middlebrooks, Thomas, Mitchell, Green, Echsner, Proctor & Papantonio, P.A., Pensacola, for Appellant.

Michael W. Kehoe of Fuller, Johnson & Farrell, P.A., Pensacola, for Appellee/Pensacola District of the United Methodist Church Conference.

William R. Mitchell of Moore, Hill, Westmoreland, Hook & Bolton, P.A., Pensacola, for Appellee/Ferry Pass Untied Methodist Church.

Michael Shelley of Butler, Burnette, Pappas, Tallahassee, for Appellee/Alabama West Florida United Methodist Conference.

DAVIS J.

Appellant, Virginia M. Carnesi, appeals the trial court's order granting summary judgment to appellees, Ferry Pass United Methodist Church, Pensacola District United Methodist Conference, and the Alabama West Florida United Methodist Conference ("church defendants"). We affirm.

Carnesi filed a complaint against the church defendants and *church volunteer* Chet Harrison, who served as the chairman of the pastor parish relations committee (PPRC), a committee staffed by volunteers which hired Carnesi as a church secretary and bookkeeper and supervised her work. Carnesi alleges that Harrison sexually harassed her; she raises claims of a hostile work environment and quid pro quo sexual harassment pursuant to section 760.01, Florida Statutes (1995), and assault, battery, and false imprisonment. The trial court granted the church defendants' motions for summary judgment on the authority of *Doe v. Evans,* 718 So. 2d 286 (Fla. 4th DCA 1998), *rev. granted,* 735 So. 2d 1284 (Fla. 1999). *Evans* involves claims of breach of fiduciary duty, negligent hiring, supervision, retention, and outrage based upon a pastor's sexual relationship with a parishioner. The *Evans* court concluded that all of the claims were barred by the excessive entanglement doctrine of the First Amendment because the determination of Doe's claims

would involve excessive governmental entanglement with religion.

Similarly, in the instant case, a determination of Carnesi's claims – which are based upon the actions of a volunteer rather than another employee – will require a secular court to review and interpret church law, policies, and practices to determine whether an agency relationship existed between Harrison, the PPRC, and the church defendants, and whether the church defendants can be held liable for Harrison's actions. We believe that, as in *Evans,* this examination would violate the First Amendment's excessive entanglement doctrine. We therefore affirm

AFFIRMED.

BROWNING, J., CONCURS. WOLF, J., DISSENTS WITH OPINION.

WOLF, J., dissenting.

Appellant worked as a bookkeeper for the church. There is no indication that her duties involved religious matters related to the church. Appellant's alleged harasser served as chairman of a committee appointed by the church to oversee her hiring as well as raises and promotions. It is unclear from the record how many employees the committee supervised or whether they had any responsibilities related to supervision of the pastor or any other employee exercising religious duties.

The alleged wrongdoing of the church involved allowing the harasser to remain in a supervisory capacity over appellant even after they were made aware of his misconduct. The case of *Doe v. Evans,* 718 So. 2d 286 (Fla. 4th DCA 1998), *rev. granted,* 735 So. 2d 1284 (Fla. 1999),

relied on by the majority, involved a claim that a church had negligently supervised and retained a religious leader of the church. While questions involving the supervision or retention of clergy arguably would raise issues about excessive entanglement with religious decisions of the church, *see Doe v. Malicki,* 25 Fla. L. Weekly D1756, 1758 (Fla. 3d DCA Jul. 26, 2000) (Schwartz, J., dissenting), the same concerns are not present in cases involving questions about the church's supervision of lay persons making employment decisions over lay employees. There is no indication in this case that any decisions made concerning appellant's employment relationship were made on the basis of religious considerations.

In *Drevlow v. Lutheran Church, Missouri Synod,* 991 F.2d 468 (8th Cir. 1993), the court held that while the First Amendment barred adjudication of a minister's claim that the church had violated its own bylaws, the First Amendment did not necessarily bar consideration by the court of the minister's remaining claims which had been based on the church having placed false information in the minister's personnel file and then circulating that file to other churches interested in hiring pastors. Although the court noted that "[p]ersonnel decisions are protected from civil court interference where review by civil courts would require the courts to interpret and apply religious doctrine or ecclesiastical law," the court went on to state that "[t]he First Amendment does not shield employment decisions made by religious organizations from civil court review . . . where the employment decisions do not implicate religious beliefs, procedures, or law." *Id.* at 471. The court indicated that, because it was reviewing an order on a motion to dismiss, it was unclear whether "the evidence offered at trial will definitely involve the district court in an

impermissible inquiry into the Synod's bylaws or religious beliefs." *Id.*

The instant case is in a similar litigation posture. In the absence of evidence that the employment decisions made here were motivated by religious considerations, the case should go forward. Sound public policy requires that religious organizations not be given blanket immunity for employment decisions relating to lay employees. I, therefore, dissent.

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

VIRGINIA M. CARNESI,

Plaintiffs,

vs.

CASE NO.
97-0807-CA-01
DIVISION "A"

FERRY PASS UNITED METHODIST CHURCH PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and CHET HARRISON, individually and as Pastor Parish Relations Committee Chairman,

Defendants.

_____/

ORDER

This cause is before the Court pursuant to notice upon motions of defendants Ferry Pass Methodist Church, Pensacola District United Methodist Conference and Alabama West Florida United Methodist Conference for summary judgment. The parties were present and heard and the Court has considered argument and memoranda of law in support of and in opposition to such motions. The court concludes that in light of the authority of *Doe v. Evans*, 718 So 2nd 286 (4 DCA 1998) these parties are entitled as a matter of law to be dismissed from this action.

Accordingly it is

ORDERED that motions of defendants Ferry Pass Methodist Church, Pensacola District United Methodist Conference and Alabama West Florida United Methodist Conference for summary judgment be and the same are hereby granted and the complaint as to these parties shall be dismissed.

DONE AND ORDERED at Pensacola, Escambia County, Florida, this 26th day of March, 1999.

/s/ Nickolas P. Geeker
NICKOLAS P. GEEKER,
CIRCUIT JUDGE

Copy furnished to:

Troy A. Rafferty, Esq., 316 South Baylen Street, Suite 600, Pensacola, FL 32501

Michael W. Kehoe, Esq., 700 South Palafox Street, Suite 170, Pensacola, FL 32501

✓ Stephen F. Bolton, Esq., Sun Trust Tower, 9th Floor, 220 W. Garden Street, Pensacola, FL 32501

W.H.F. Wiltshire, Esq., 201 East Government Street, Pensacola, FL 32501

Kathy J. Maus, Esq., 3520 Thomasville Road, Suite 102, Tallahassee, FL 32308

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

VIRGINIA M. CARNESI,

Plaintiff,

vs.

CASE NO.
97-0807-CA-01

FERRY PASS UNITED
METHODIST CHURCH
PENSACOLA DISTRICT UNITED
METHODIST CONFERENCE,
ALABAMA WEST FLORIDA
UNITED METHODIST
CONFERENCE, and CHET
HARRISON, individually and as
Pastor Parish Relations
Committee Chairman,

Defendants.

_____/

ORDER GRANTING PLAINTIFF'S MOTION TO VACATE

IT IS HEREBY ORDERED AND ADJUDGED that due to mistake, the Court's Order granting the church defendants summary judgment was not forwarded to counsel for plaintiff nor counsel for the defendants until September 29, 1999. Because of the failure to properly notify the counsel of record, the Court's Order dated March 26, 1999, is hereby vacated and the order is deemed entered and filed with the clerk as of the date of this Order on Plaintiffs Motion to Vacate.

DATED this 29th day of October, 1999.

/s/ Nickolas P. Geeker
CIRCUIT JUDGE

cc: Troy A. Rafferty, Esquire
Michael W. Kehoe, Esquire
Kathy J. Maus, Esquire
Stephen F. Bolton, Esquire ✓
W.H.F. Wiltshire, Esquire

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

VIRGINIA M. CARNESI,

Plaintiff,

vs.

FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT OF THE UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and CHESTER HARRISON, Individually and as Pastor Parish Relations Committee Chairman,

Defendants.

CASE NO.: 97-0807
DIVISION: "A"

FINAL JUDGMENT FOR DEFENDANTS FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT OF THE UNITED METHODIST CONFERENCE, AND ALABAMA-WEST FLORIDA UNITED METHODIST CONFERENCE

THIS CAUSE having come before the Court pursuant to the motions for summary judgment filed on behalf of Ferry Pass United Methodist Church, Pensacola District of the United Methodist Conference, and the Alabama-West Florida United Methodist Conference, and the Court having entered an order on March 26, 1999, and later on October 29, 1999, granting said motions and dismissing said Defendants from this case, it is hereby

ADJUDGED that Plaintiff Carnesi take nothing by this action against Defendants Ferry Pass United Methodist Church, Pensacola District of the United Methodist Conference, and the Alabama-West Florida United Methodist Conference, and that these Defendants go hence without day, with the Court reserving jurisdiction to tax attorneys' fees and costs upon proper motion. This judgment does not effect the claim of Plaintiff, Virginia Carnesi, against Defendant, Chester Harrison.

DONE AND ORDERED this 19th day of November, 1999, in Pensacola, Escambia County, Florida.

/s/ Nickolas P. Geeker
Honorable
Nickolas P. Geeker

Copies Furnished:

✓Troy A. Rafferty
William H. F. Wiltshire
Kathy J. Maus
Michael W. Kehoe
Stephen F. Bolton

Supreme Court of Florida

WEDNESDAY, SEPTEMBER 11, 2002

CASE NO.: SC00-2579
Lower Tribunal No.: 1D99-4333

VIRGINIA M. CARNESI	vs.	FERRY PASS UNITED METHODIST CHURCH, ET AL.
Petitioner(s)		Respondent(s)

The Respondent, Alabama West Florida United Methodist Conference's Motion for Rehearing and/or Clarification filed, July 3, 2002, and the Respondent, The Pensacola District of the Alabama West Florida Conference of the United Methodist Church's Motion for Rehearing or Clarification, filed July 8, 2002, are hereby denied.

ANSTEAD, C.J., and SHAW, PARIENTE, LEWIS and QUINCE, JJ., concur. WELLS, J., and HARDING, Senior Justice, dissent.

A True Copy
Test:

/s/ Thomas D. Hall [SEAL]
Thomas D. Hall
Clerk, Supreme Court

bh
Served:
HON. NICKOLAS P. GEEKER, JUDGE
HON. JON S. WHEELER, CLERK
TROY A. RAFFERTY
TIMOTHY M. O'BRIEN
ERIC DUANE STEVENSON
KIM E. WELLS
WILLIAM R. MITCHELL
STEPHEN F. BOLTON
MICHAEL G. HAIRE
MICHAEL W. KEHOE
HON. ERNIE LEE MAGAHA, CLERK
KATHY J. MAUS
W. H. F. WILTSHIRE
J. PATRICK FITZGERALD
JAMES F. GILBRIDE
ROBERT S. GLAZIER
ADAM D. HOROWITZ
PETER A. MILLER

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I.

Section one of the Fourteenth Amendment states:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

VIRGINIA M. CARNESI,

Plaintiff,

vs.

CASE NO.:
97-0807
DIVISION: "A"

FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT OF THE ALABAMA WEST FLORIDA CONFERENCE OF THE UNITED METHODIST CHURCH, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, UNITED METHODIST CHURCH, and CHESTER HARRISON, Individually and as Pastor Parish Relations Committee Chairman,

Defendants.

_____/

FERRY PASS UNITED METHODIST CHURCH'S MOTION FOR SUMMARY JUDGMENT

Defendant, Ferry Pass United Methodist Church (the "Church"), by and through its undersigned counsel, hereby moves for summary judgment and as grounds therefore would show that the First Amendment establishment clause and free exercise clause preclude judicial resolution of these claims. In support of the motion, the Church would hereby adopt the memorandum and record as outlined in the motion of Defendant, Pensacola District of the Alabama West Florida Conference of the United Methodist Church (the "District") filed in this action. The Church would further show the Court that to evaluate Plaintiff's claims against the Church, the finder of fact would necessarily have to evaluate the internal operation

of the Church and the relationships between the Church and its employees. As stated in the memorandum of the District, such a dispute is not within the jurisdiction of the civil courts and Plaintiff's claims against the local Church are similarly barred.

* * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by [✓] U.S. MAIL to Troy A. Rafferty, Esquire, LEVIN, MIDDLEBROOKS, THOMAS, MITCHELL, GREEN, ECHSNER, PROCTOR & PAPANTONIO, P.A., 316 South Baylen Street, Suite 600, Pensacola, FL 32501; William H.F. Wiltshire Esquire, 201 East Government Street, Pensacola, FL 32501; Kathy J. Maus, Esquire, BUTLER, BURNETTE & PAPPAS, 3520 Thomasville Road, Suite 102. Tallahassee, Florida 32308; and Michael W. Kehoe, Esquire, FULLER, JOHNSON & FARRELL, 700 South Palafox Street, Suite 170, Pensacola, FL 32581, this 1st day of ~~January~~ February, 1999.

/s/ Stephen F. Bolton
Stephen F. Bolton
Florida Bar No. 327859
MOORE, HILL, WESTMORELAND,
HOOK & BOLTON, P.A.
Sun Trust Tower, 9th Floor
Post Office Box 13290
Pensacola, FL 32591-3290
(850) 434-3541
Attorneys for Defendant
FERRY PASS UNITED
METHODIST CHURCH

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

VIRGINIA M. CARNESI,

Plaintiff,

vs. CASE NO.:

FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, UNITED METHODIST CHURCH and CHESTER HARRISON, individually and as Pastor Parish Relations Committee Chairman,

Defendants.
_____/

COMPLAINT

Plaintiff, VIRGINIA M. CARNESI, sues Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, UNITED METHODIST CHURCH and CHESTER HARRISON and alleges:

JURISDICTION

1. This is an action for damages that exceeds $15,000.00.

COMMON ALLEGATIONS

2. Defendant, FERRY PASS UNITED METHODIST CHURCH, is a religious organization licensed to and conducting business in the State of Florida.

3. Defendant, FERRY PASS UNITED METHODIST CHURCH is a member of the PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH.

4. Defendant, CHESTER HARRISON, is and was at all times material to this Complaint a resident of Pensacola, Escambia County, Florida.

5. Plaintiff, VIRGINIA M. CARNESI, was hired on February 13, 1995 and served in the employment of Defendants at all times relevant to this action.

6. On July 29, 1996, Plaintiff, VIRGINIA M. CARNESI was terminated from her employment with Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH.

7. Almost immediately after she began her employment with Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, Plaintiff, VIRGINIA M. CARNESI, was subjected to repeated episodes of sexual harassment by Defendant's agent, CHESTER HARRISON, which included but were not limited to the following:

a. comments of a sexual nature so as to make her know that he wanted her;

b. coming up behind her and hugging and kissing her without her consent;

c. touching her breasts,

d. touching the top portion of her butt,

e. unwelcome sexual advances such as holding her against her will close to his body so as to make her feel his erection

f. tongue kissing her; and

g. assault and battery upon her person.

8. Plaintiff, VIRGINIA M. CARNESI, reported the incidents of sexual harassment to the Pastor, Rev. E. Bruce Fitzgerald and Rev. Alton Moore of FERRY PASS UNITED METHODIST CHURCH.

9. After being notified by Plaintiff, VIRGINIA M. CARNESI, Rev. E. Bruce Fitzgerald told Plaintiff, VIRGINIA M. CARNESI, that nothing could be done.

10. After being notified by Plaintiff, VIRGINIA M. CARNESI, Rev. Alton Moore chose not to believe her and nothing was done.

11. At all times relevant to this Complaint, Defendant, CHESTER HARRISON, was acting for himself, individually, and as Pastor Parish Relations Chairman of FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH.

COUNT I

SEXUAL HARASSMENT – HOSTILE WORK ENVIRONMENT

12. Plaintiff, VIRGINIA M. CARNESI, readopts and realleges allegations contained in paragraph 1-11 as though fully set forth herein.

13. This action arises under Section 760.01 Fla. Stat. *et seq.*

14. The Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, are a religious organization licensed to and conducting business in Escambia County, Florida.

15. The Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, employ 15 or more employees and, therefore, is an "employer" for purposes of the Florida Civil Rights Act of 1992, Section 760.01 Fla. Stat. *et seq.*

16. On or about August 26, 1996, Plaintiff, VIRGINIA M. CARNESI, filed a Charge of Discrimination alleging sexual harassment with the Florida Commission on Human Relations and the Equal Employment Opportunity Commission.

17. Since the date of filing the Administrative Complaint, 180 days have passed and pursuant to pursuant to [sic] Section 760.11(8) Fla. Stat., Plaintiff is entitled to pursue

a civil action since no determination has been made by the Commission.

18. Plaintiff, VIRGINIA M. CARNESI, has complied with all the prerequisites and requirements to bring this cause of action, including having exhausted all administrative remedies. All conditions precedent to this action have been met or waived.

19. The Plaintiff, VIRGINIA M. CARNESI, is a female.

20. On several different occasions more particularly set forth in this Complaint, during the course of Plaintiff, VIRGINIA M. CARNESI'S, employment with Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, Plaintiff, VIRGINIA M. CARNESI, was sexually harassed by her supervisor, CHESTER HARRISON. The sexually harassing conduct included, but is not limited to:

a. comments of a sexual nature so as to make her know that he wanted her;

b. coming up behind her and hugging and kissing her without her consent;

c. touching her breasts

d. touching the top portion of her butt

e. unwelcome sexual advances such as holding her against her will close to his body so as to make her feel his erection

f. tongue kissing her; and

g. assault and battery upon her person.

21. The sexually offensive, hostile, and intimating conduct directed at Plaintiff, VIRGINIA. M. CARNESI, was unwelcome and based on sex.

22. Based on the conduct of CHESTER HARRISON, Plaintiff, VIRGINIA M. CARNESI, was forced as a condition of her employment with Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and METHODIST CHURCH, to work in an intimidating, hostile, and sexually offensive work environment.

23. Submission to this sexually offensive, hostile, and intimidating conduct was made both explicitly and implicitly a condition of her employment, and it affected a term, condition, and a privilege of her employment.

24. Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, knew or should have known, of this harassment by CHESTER HARRISON, but failed to properly investigate and take affirmative action to assure that the harassment ceased.

25. Plaintiff, VIRGINIA M. CARNESI, directly reported these incidents of sexual harassment to her immediate supervisor, and other employees of Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH.

26. As a direct and proximate result of Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH's actions, the Plaintiff, VIRGINIA M. CARNESI, was caused to suffer humiliation, embarrassment, mental distress, mental anguish, and other directly and indirectly related expenses and Plaintiff will suffer such losses in the future.

27. Plaintiff, VIRGINIA M. CARNESI, has been forced to hire the legal services of the undersigned to enforce her rights under § 760.01 Fla. Stat. *et seq.* and has agreed to pay her attorneys reasonable attorneys' fees for the services rendered in this cause.

WHEREFORE, Plaintiff sues the Defendants for compensatory and punitive damages, and all of the relief to which she is entitled at law or in equity.

The Plaintiff, VIRGINIA M. CARNESI, hereby demands trial by jury, reimbursement of costs, and payment of attorneys' fees pursuant to § 760.11(5) Fla. Stat.

COUNT II

SEXUAL HARASSMENT - QUID PRO QUO

28. Plaintiff, VIRGINIA M. CARNESI, realleges and incorporates by reference herein paragraphs 1-27 as if fully set forth herein.

29. This action arises under a § 760.01 Fla. Stat. *et seq.*

30. Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST

CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, are a religious organization licensed to and conducting business in Escambia County, Florida.

31. The Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, employ 15 or more employees and, therefore, is an "employer" for purposes of the Florida Civil Rights of 1992, § 760.01 Fla. Stat. *et seq.*

32. The Plaintiff, VIRGINIA M. CARNESI, has complied with all the prerequisites and requirements to bring this cause of action, including having exhausted all administrative remedies. All conditions precedent have been met or waived.

33. The Plaintiff, VIRGINIA M. CARNESI, is a female.

34. On several different occasions during the course of her employment with FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, Plaintiff, VIRGINIA M. CARNESI, was sexually harassed by her supervisor, CHESTER HARRISON. The sexually harassing conduct included, but is not limited to:

a. comments of a sexual nature so as to make her know that he wanted her;

b. coming up behind her and hugging and kissing her without her consent;

c. touching her breasts

d. touching the top portion of her butt

e. unwelcome sexual advances such as holding her against her will close to his body so as to make her feel his erection

f. tongue kissing her; and

g. assault and battery upon her person.

35. The sexually offensive, hostile, harassing, and intimidating conduct directed at VIRGINIA M. CARNESI was unwelcome and based on sex.

36. PLAINTIFF, VIRGINIA M. CARNESI's, reaction to the harassment complained of above affected tangible aspects of her compensation, terms, conditions, and privileges of employment. This included, but is not limited to her being threatened with her position with Defendants FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, in regards to her succumbing to the sexual advances of CHESTER HARRISON.

37. As a direct and proximate result of Defendant's actions, Plaintiff, VIRGINIA M. CARNESI, was caused to suffer humiliation, embarrassment, mental distress, mental anguish, and other directly and indirectly related expenses and Plaintiff will suffer such losses in the future.

38. Plaintiff, VIRGINIA M. CARNESI, has been forced to hire the legal services of the undersigned to enforce her rights under § 760.01 Fla. Stat. *et seq.*, and has

agreed to pay her attorneys reasonable attorneys' fees for the services rendered in this cause.

WHEREFORE, Plaintiff sues the Defendants for compensatory and punitive damages, and all other the relief to which she is entitled at law or in equity.

The Plaintiff, VIRGINIA M. CARNESI, hereby demands trial by jury, reimbursement of costs, and payment of attorneys' fees pursuant to § 760.11(5) Fla. Stat.

COUNT III

BATTERY

39. Plaintiff, VIRGINIA M. CARNESI, realleges and incorporates by reference herein paragraphs 1-38 as if fully set forth herein.

40. This is an action based on battery against Defendants, CHESTER HARRISON, individually and as an agent of FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and FERRY PASS UNITED METHODIST CHURCH, UNITED METHODIST CHURCH, and PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, based upon the acts committed by CHESTER HARRISON.

41. At all times material herein, CHESTER HARRISON was acting with actual and/or apparent authority as an agent of FERRY PASS UNITED METHODIST

CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH.

42. CHESTER HARRISON's actions, which were committed as an agent of FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, as more fully described in the paragraphs above, constitute unlawful touching and battery of VIRGINIA M. CARNESI in that CHESTER HARRISON intended to and actually touched VIRGINIA M. CARNESI without her consent.

43. At all times material hereto there was a complete absence of VIRGINIA M. CARNESI's consent to such unlawful, harmful, and/or offensive touching by CHESTER HARRISON.

44. Defendant CHESTER HARRISON's offensive and/or harmful touching was intentional, willful, wanton, malicious, and/or was committed with a reckless disregard for VIRGINIA M. CARNESI's rights and the consequences of CHESTER HARRISON's actions.

45. As a direct, proximate and, foreseeable result of Defendant's actions, VIRGINIA M. CARNESI has suffered humiliation, embarrassment, pain, suffering and mental anguish. The suffering is permanent, continuing and will cause Ms. Carnesi to suffer losses in the future.

WHEREFORE, Plaintiff demands trial by jury and that judgment be entered against Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA

DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH and CHESTER HARRISON, as follows:

1) damages in excess of $15,000.00;

2) reasonable costs; and

3) such other and further relief as the court may deem just and proper.

COUNT IV

ASSAULT

46. Plaintiff, VIRGINIA M. CARNESI, realleges and incorporates by reference herein paragraphs 1-45 as if fully set forth herein.

47. This is an action based on assault against Defendants, CHESTER HARRISON, individually and as an agent of FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, and FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, based upon the acts committed by CHESTER HARRISON.

48. At all times material herein, CHESTER HARRISON was acting with actual and/or apparent authority and as an agent of FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED

METHODIST CONFERENCE, and UNITED METHODIST CHURCH.

49. CHESTER HARRISON's actions, which were committed as an agent of FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, as described herein, constitute an assault of VIRGINIA M. CARNESI in that CHESTER HARRISON intended to and actually did place VIRGINIA M. CARNESI in fear and/or apprehension of bodily harm.

50. At all times material hereto, there was a complete absence of VIRGINIA M. CARNESI's consent to such assaults by CHESTER HARRISON.

51. CHESTER HARRISON's assaults were intentional, willful, wanton, malicious, and/or committed with such reckless disregard for VIRGINIA M. CARNESI's rights and the consequences of CHESTER HARRISON's actions and were intended by CHESTER HARRISON to put VIRGINIA M. CARNESI in apprehension of immediate or harmful contact.

52. As a direct result of such actions, VIRGINIA M. CARNESI was put in immediate apprehension of immediate or harmful contact.

53. Defendants engaged in such acts with the knowledge or substantial certainty that emotional and mental distress would result.

54. As a direct, proximate and foreseeable result of Defendant's actions, VIRGINIA M. CARNESI has suffered humiliation, embarrassment, pain, suffering and mental anguish. The suffering is permanent, continuing and will

cause VIRGINIA M. CARNESI to suffer losses in the future.

WHEREFORE, Plaintiff demands trial by jury and that judgment be entered against Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE and UNITED METHODIST CHURCH, and CHESTER HARRISON, as follows:

1) damages in excess of $15,000.00;

2) reasonable costs; and

3) such other and further relief as the court may deem just and proper.

COUNT V

FALSE IMPRISONMENT

55. Plaintiff, VIRGINIA M. CARNESI, realleges and incorporates by reference herein paragraphs 1-54 as if fully set forth herein.

56. Defendant, CHESTER HARRISON, acting individually and as an agent of Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, intentionally, willfully and maliciously held, restrained and falsely imprisoned the Plaintiff, VIRGINIA M. CARNESI, against her will as noted in this Complaint.

57. As a direct, foreseeable, and proximate result of Defendant's actions, VIRGINIA M. CARNESI suffered

humiliation, embarrassment, pain, suffering and mental anguish. The suffering is permanent, continuing and will cause VIRGINIA M. CARNESI to suffer losses in the future.

WHEREFORE, Plaintiff demands trial by jury and requests judgment be entered against Defendants, FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and UNITED METHODIST CHURCH, and CHESTER HARRISON, as follows:

1) damages in excess of $15,000.00;

2) reasonable costs; and

3) such other and further relief as the court may deem just and proper.

LEO A. THOMAS, Esquire
Florida Bar Number: 149502
TROY A. RAFFERTY, Esquire
Florida Bar Number: 024120
Levin, Middlebrooks, Thomas, Mitchell, Green, Echsner, Proctor & Papantonio, P.A.
316 South Baylen Street, Suite 600
Post Office Box 12308
Pensacola, Florida 32581
(904) 435-7169 (Thomas)
(904) 435-7163 (Rafferty)
Attorneys for Plaintiff

IN THE SUPREME COURT OF FLORIDA

VIRGINIA M. CARNESI,

Petitioner,

vs.

FERRY PASS UNITED METHODIST CHURCH, THE PENSACOLA DISTRICT OF THE ALABAMA WEST FLORIDA CONFERENCE OF THE UNITED METHODIST CHURCH, and ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE OF THE UNITED METHODIST CHURCH,

Respondents.

_____/

CASE NO.: SC00-2579
Lower Tribunal No.:
ID99-4333

MOTION FOR REHEARING OR CLARIFICATION

Respondent, THE PENSACOLA DISTRICT OF THE ALABAMA WEST FLORIDA CONFERENCE OF THE UNITED METHODIST CHURCH ("The District"), moves the Court pursuant to Florida Rule of Appellate Procedure 9.330 for rehearing or clarification on the issues presented by the dissenting opinions in the Court's Opinion in this case.

FULLER, JOHNSON & FARRELL, P.A.

/s/ Michael W. Kehoe
Michael W. Kehoe
Florida Bar No.: 0825883
700 South Palafox Street, Suite 170
Post Office Box 12219
Pensacola, FL 32581
(850) 434-8845
Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Rehearing or Clarification has been furnished, by U.S. Mail, on this 3rd day of July, 2002, to the following: Troy A. Rafferty, Esquire/Timothy M. O'Brien, Esquire, Post Office Box 12308, Pensacola, FL 32581; William H. F. Wiltshire, Esquire, 201 East Government Street, Pensacola, FL 32501; Kathy J. Maus, Esquire/Kim E. Wells, Esquire, 3520 Thomasville Road, Suite 102, Tallahassee, FL 32308; William R. Mitchell, Esquire/Stephen F. Bolton, Esquire, Post Office Box 30589, Pensacola, FL 32503-4350; James F. Gilbride, Esquire, One Biscayne Tower, Suite 1570, Two South Biscayne Boulevard, Miami, Florida 33131; and J. Patrick Fitzgerald, Esquire, 110 Merrick Way, Suite 3B, Coral Gables, Florida 33134.

FULLER, JOHNSON & FARRELL, P.A.

/s/ Michael W. Kehoe

Michael W. Kehoe
Florida Bar No.: 0825883
700 South Palafox Street, Suite 170
Post Office Box 12219
Pensacola, Florida 32581
(850) 434-8845
Counsel for Respondent
Pensacola District

IN THE SUPREME COURT, STATE OF FLORIDA

VIRGINIA M. CARNESI,

Petitioner/Appellant,

vs.

FERRY PASS UNITED METHODIST CHURCH, PENSACOLA DISTRICT UNITED METHODIST CONFERENCE, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE, and CHET HARRISON, individually, and as a Pastor Parish Relations Committee Chairman,

Respondents/Appellees.

_____/

CASE NO.: SC002579
LOWER TRIBUNAL
NO.: ID99-4333

RESPONDENT'S MOTION FOR REHEARING AND/OR CLARIFICATION

COMES now the RESPONDENT, ALABAMA WEST FLORIDA UNITED METHODIST CONFERENCE ("The Conference"), by and through its undersigned attorneys, and pursuant to Fla. R. App. Proc. 9.330(a), respectfully moves this Court for rehearing and/or clarification of its opinion dated June 20, 2002, and as grounds therefore, states as follows:

Respectfully, the Court appears to have overlooked or misapprehended the following points of law or undisputed fact in its decision:

1. The Petitioner's allegations against The Conference are premised solely on a theory of vicarious liability for the alleged actions of Chester Harrison, a church member volunteer of Ferry Pass United Methodist Church (herein "Harrison").

2. The Conference stands in different shoes than the other Respondents herein, is the furthest removed from Harrison's alleged actions, and the legal issues in this case should not be controlled by this Court's decisions in *Evans* and *Malicki*. More specifically, the uncontradicted Affidavit of William Wesley Morris, Bishop of the Alabama West Florida United Methodist Conference, clearly establishes three critical facts that make *Evans* and *Malicki* inapplicable as to this Respondent:

   1. Defendant Harrison was a *volunteer, not an employee* of Ferry Pass United Methodist Church. ¶ 7, Affidavit.

   2. *Neither* plaintiff nor defendant Harrison were *employed* by *The Conference*. ¶ 6, Affidavit.

   3. Defendant Harrison did not *ever* act on behalf of the Conference in any capacity. ¶ 7, Affidavit.

3. The evidence of record is undisputed that Harrison served in the role as chairman of the Staff (or Pastor) Parish Relations Committee as a volunteer and member of the Ferry Pass United Methodist Church (herein "Ferry Pass"), *not as an employee of Ferry Pass*. Affidavit of Bishop Morris, ¶ 7; Deposition of Charles William Avery (November 11, 1998), p. 16; Deposition of Chester Harrison (November 11, 1998), ps. 14, 16. Ferry Pass was a member of the Pensacola District and the Pensacola District was a member of The Conference. (R. 272.)

4. The Conference is a distinct and separate entity from Ferry Pass. ¶ 3, Affidavit of Bishop Morris. Regarding the everyday affairs of Ferry Pass, like all other member churches, The Conference has no authority or control. ¶¶ 3 and 4, Affidavit of Bishop Morris.

5. An agency relationship requires: 1) an *acknowledgment by the principal* that the agent will act for him; 2) *acceptance by the agent* of the undertaking; and 3) *control by the principal* over the actions of the agent. *Goldschmidt v. Holman*, 571 So.2d 422, 424 n.5 (Fla.1990) citing the *Restatement (Second) of Agency* § 1 (1957) (emphasis added). A principal is liable only for the acts of an agent which are within the scope of his or her apparent or actual authority, or the acts outside of the agent's authority which are subsequently ratified by the principle. *See Aetna Insurance Co. v. Holmes*, 52 So. 2d 801 (Fla. 1910); *Robinson v. Abreu*, 345 So. 2d 404 (Fla. 2d DCA 1977).

6. Agency was not at issue in either *Doe v. Evans*, 814 So.2d 370 (Fla. 2002) or *Malicki v. Doe*, 814 So. 2d 347 (Fla. 2002), i.e., no question existed regarding whether the tortfeasors in those cases were agents of the Church defendant. Indeed, both cases are inapposite to the central issue in this case as to this whether The Conference can be held liable for acts committed by a member church's volunteer – where no agency relationship exists. Since there was no agency issue in either *Malicki* or *Evans*, it is unclear how the trial court is to proceed as to The Conference, whom the Petitioner claims is liable as principal for Harrison's acts as a church member volunteer. Moreover, the only way the trial court could analyze whether an agency relationship existed between The Conference and Respondent Harrison would be based *solely on an interpretation of church law, policies and practices* through a

review of *The Book of Discipline*, which is the only basis on which Petitioner alleges an agency relationship existed. Such an expectation by this Court appears to be in direct conflict with Florida law, notwithstanding this Court's reasoning in both *Malicki* and *Evans* (where liability in those cases turned on the neutral application of tort law).

7. *Malicki* and *Evans* both stand for the proposition that the First Amendment does not shield churches from liability for acts of their clergy. However, it is unclear whether this Court is directing the trial court to expand *Malicki* and *Evans* to apply to cases such as the present case, involving acts of members where no agency relationship exists. Since there is no legal agency relationship between The Conference and Harrison, there is no basis for the application of *Malicki* or *Evans* to this case. Instead of a shield, such an application could establish a *conduit* through which liability could be imposed on The Conference without evidence of Harrison's employment, agency, or other legal affiliation with The Conference, while simultaneously claiming that The Conference, or other Church Respondents, cannot defend based on that hierarchy. Such an application would distort the holdings and rationale expressed by this Court in *Malicki* and *Evans* and certainly contradict the concerns over excessive entanglement expressed therein.

WHEREFORE, The Conference respectfully requests that this Court reconsider its decision as to Respondent The Conference, grant rehearing and withdraw its prior opinion. In the alternative, The Conference respectfully requests that this Court clarify its decision with regard to the applicability of *Doe v. Evans*, 814 So. 2d 370 (Fla. 2002) and *Malicki v. Doe*, 814 So. 2d 347 (Fla. 2002) to The Conference.

Respectfully submitted,

/s/ [Illegible]

KATHY J. MAUS, ESQ.
Florida Bar No. 0896330
KIM E. WELLS, ESQ.
Florida Bar No. 0629219
MICHAEL G. HAIRE, JR., ESQ.
Florida Bar No. 0374910
Butler Burnette Pappas LLP
3520 Thomasville Road – Suite #102
Tallahassee, Florida 32308
(850) 894-4111/894-4999 Facsimile

Attorneys for Respondent-Appellee,
Alabama West Florida United
Methodist Conference

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies, along with a 3.5 diskette appropriately marked, has been furnished to this Court by HAND DELIVERY, on this 3rd day of July, 2002, with copies of same being provided by U.S. MAIL, to:

STEPHEN F. BOLTON, ESQ.
Hook, Bolton, Mitchell,
Kirkland, McGhee
Post Office Box 30589
Pensacola, FL 32503-1589

TIMOTHY M. O'BRIEN, ESQ.
Levin, Papantonio, Thomas,
Mitchell, Echsner &
Proctor, P.A.
Post Office Box 12308
Pensacola, FL 32581

MICHAEL KEHOE, ESQ.
Fuller, Johnson & Farrell
700 S. Palafox Place
Suite #170
Pensacola, FL 32501

W.H.F. WILTSHIRE, ESQ.
Harrell, Wiltshire, P.A.
201 E. Government Street
Pensacola, FL 32501

TROY A. RAFFERTY, ESQ.
Levin, Middlebrooks, Thomas, Mitchell, Green, et al.
Post Office Box 12308
Pensacola, FL 32581

WILLIAM R. MITCHELL, ESQ.
Hook, Bolton, Mitchell, Kirkland, McGhee, P.A.
Post Office Box 13290
Pensacola, FL 32591-3290

ERIC DUANE STEVENSON, ESQ.
Post Office Box 12726
Pensacola, FL 32575-2726

JAMES F. GILBRIDE, ESQ.
Gilbride, Heller & Brown, P.A.
One Biscayne Tower – Suite #1570
2 S. Biscayne Boulevard
Miami, FL 33131

JOHN PATRICK FITZGERALD, ESQ.
110 Merrick Way
Coral Gables, FL 33134

ADAM D. HOROWITZ, ESQ.
Gilbride, Heller & Brown, P.A.
One Biscayne Tower – Suite #1570
2 S. Biscayne Boulevard
Miami, FL 33131

ROBERT GLAZIER, ESQ.
Law Office of Robert S. Glazier
The Ingraham Building – Suite #1020
25 S.E. 2nd Avenue
Miami, FL 33131-1604

PETER A. MILLER, ESQ.
Holland, Singer & Miller
Miami Center – Suite #2950
201 S. Biscayne Boulevard
Miami, FL 33131

BUTLER BURNETTE PAPPAS LLP

/s/ KM
KATHY M. MAUS, ESQ.
Florida Bar No. 0896330
KIM E. WELLS, ESQ.
Florida Bar No. 0629219

MICHAEL G. HAIRE, JR., ESQ.
Florida Bar No. 0374910
3520 Thomasville Road –
Suite #102
Tallahassee, Florida 32308
(850) 894-4111/894-4999 Facsimile
Attorneys for Respondent-Appellee,
Alabama West Florida United
Methodist Church

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that the foregoing Brief was typed in Times New Roman 14 font, a font that is proportionally spaced.

BUTLER BURNETTE PAPPAS LLP

/s/ KM

KATHY M. MAUS, ESQ.
Florida Bar No. 0896330
KIM E. WELLS, ESQ.
Florida Bar No. 0629219
MICHAEL G. HAIRE, JR., ESQ.
Florida Bar No. 0374910
3520 Thomasville Road –
Suite #102
Tallahassee, Florida 32308
(850) 894-4111/894-4999 Facsimile
Attorneys for Respondent-Appellee,
Alabama West Florida United
Methodist Church

MANDATE

SUPREME COURT OF FLORIDA

To the Honorable, the Judges of the:

District Court of Appeal, First District

WHEREAS, in that certain cause filed in this court styled:

VIRGINIA M. CARNESI vs. FERRY PASS UNITED METHODIST CHURCH, ET AL.

Case No.: **SC00-2579**

Your Case No.: **1D99-4333**

The attached opinion was rendered on: **06/20/2002**

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida.

WITNESS, The Honorable HARRY LEE ANSTEAD, Chief Justice of the Supreme Court of Florida and the Seal of said Court at Tallahassee, the Capital, on this 11th day of September, 2002.

[SEAL]

/s/ Thomas D. Hall
Clerk of the
Supreme Court of Florida

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399-1850

Telephone No. (850) 488-6151

September 27, 2002

CASE NO.: 1D99-4333

L.T. No.: 97-0807-CA-01

Virginia M. Carnesi	v.	Ferry Pass United Methodist Church, Et Al.
Appellant/Petitioner(s),		Appellee/Respondent(s).

BY ORDER OF THE COURT:

ORDER ON MANDATE

WHEREAS, the decision of this Court was filed November 16, 2000, wherein the decision of the Circuit Court for Escambia County was affirmed, and

WHEREAS, upon review by the Supreme Court of Florida by discretionary review proceedings the Supreme Court of Florida quashed and remanded the decision of this Court in light of its decisions in *Doe v. Evans,* 814 So. 2d 370 (Fla. 2002) and *Malicki v. Doe,* 814 So. 2d 347 (Fla. 2002), and

WHEREAS, the Circuit Court for Escambia County based its summary judgment decision in this case on *Doe v. Evans,* 718 So. 2d 286 (Fla. 4th DCA 1998), which was subsequently quashed by the Supreme Court of Florida in *Doe v. Evans,* 814 So. 2d 370 (Fla. 2002), and

WHEREAS, the mandate of the Supreme Court of Florida has been filed with this Court, now therefore,

IT IS ORDERED that the opinion of this Court, filed November 16, 2000, be set aside, and the cause remanded for reconsideration by the Circuit Court for Escambia County in light of the Supreme Court of Florida's decisions in Evans and Malicki.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

Troy A. Rafferty	Alesia Holliday Mclevey	Stephen F. Bolton
Kathy J. Maus		Michael Shelley
W.H.F. Wiltshire	William R. Mitchell	Hon. Ernie Lee
	Michael W. Kehoe	Magaha, Clerk

jm

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK [SEAL]

MANDATE

From

DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

SUPREME COURT MANDATE

To the Honorable Judges of the Circuit Court for Escambia County

WHEREAS, in that certain cause filed in this Court styled:

Virginia M. Carnesi — **Case No: 1D99-4333**

v. — **Lower Tribunal Case No: 97-0807-CA-01**

Ferry Pass United Methodist Church Et Al

The attached opinion of this court was issued on November 16, 2000.

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with the attached opinion of the Supreme Court of Florida issued on June 20, 2002.

WITNESS the Honorable MICHAEL E. ALLEN, Chief Judge of the District Court of Appeal of Florida, First District, and the Seal of said Court done at Tallahassee, Florida, on this 27th day of September 2002.

[SEAL]

/s/ Jon S. Wheeler
JON S. WHEELER, Clerk
District Court of Appeal of
Florida, First District

EXCERPTS
BOOK OF DISCIPLINE
THE UNITED METHODIST CHURCH

The Process for Carrying Out Our Mission

We make disciples as we:

– proclaim the gospel, seek, welcome and gather persons into the body of Christ;

– lead persons to commit their lives to God through Jesus Christ;

– nurture persons in Christian living through worship, baptism, communion, Bible and other studies, prayer, and other means of grace;

– send persons into the world to live lovingly and justly as servants of Christ by healing the sick, feeding the hungry, caring for the stranger, freeing the oppressed, and working to have social structures consistent with the gospel; and

– continue the mission of seeking, welcoming, and gathering persons into the community of the body of Christ.

The Global Nature of Our Mission

The Church seeks to fulfill its global mission through the Spirit-given servant ministries of all Christians, both lay and clergy. Faithfulness and effectiveness demand that all ministries in the Church be shaped by the mission of making disciples of Jesus Christ.

¶201. A local church is a community of true believers under the Lordship of Christ. It is the redemptive fellowship in which the Word of God is preached by persons

divinely called and the sacraments are duly administered according to Christ's own appointment. Under the discipline of the Holy Spirit, the church exists for the maintenance of worship, the edification of believers, and the redemption of the world.

¶202. The church of Jesus Christ exists in and for the world. It is primarily at the level of the local church that the church encounters the world. The local church is a strategic base from which Christians move out to the structures of society. The function of the local church, under the guidance of the Holy Spirit, is to help people to personally know Jesus Christ and to live their daily lives in light of their relationship with God. Therefore, the local church is to minister to persons in the community where the church is located, to provide appropriate training and nurture to all, to cooperate in ministry with other local churches, to defend God's creation and live as an ecologically responsible community, and to participate in the worldwide mission of the church, as minimal expectations of an authentic church.

Pages 115-116

¶246. The basic organizational plan for the local church shall include provision for the following units: a charge conference, a church council, a committee on pastor-parish relations, a board of trustees, a committee on finance, a committee on nominations and personnel, and such other elected leaders, commissions, councils, committees, and task forces as the charge conference may determine.

App. 52

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¶251. The charge conference, or church conference authorized by the district superintendent, shall elect upon nomination of the committee on nominations and personnel of each local church on the pastoral charge, or by nomination from the floor and by vote of each such local church, at least the following leaders for the four basic responsibilities (¶246): . . .

3. The committee on pastor-parish relations and its chairperson.

Page 143

2. There shall be a committee on pastor-parish relations (staff-parish relations) of not fewer than five nor more than nine laypersons representative of the total charge . . .

b) In those charges where there is a multiple staff, full or part-time, or there are members who are deacons appointed to relate to this church, the [pastor-parish relations] committee shall relate to the entire staff, clergy and lay. The committee shall relate to all diaconal ministers related to the local church, including those appointed for service beyond the local church. The committee shall provide to all staff members direct personal and professional access to the committee on pastor-parish relations as well as to the pastor, the district superintendent, and the bishop. In such cases the committee may be known as the committee on staff-parish relations. . . .

f) The duties of the [pastor-parish relations] committee shall include the following:

(1) To confer and counsel with the pastor and staff in making an effective ministry by being available for counsel, keeping the pastor and staff advised concerning conditions within the congregation as they affect relations between the pastor or staff and the people, and continually interpreting to the people the nature and function of the ministry, including cross-racial appointments, appointments of women, and sensitivity to open itineracy. . . .

(3) To counsel with the pastor and staff on matters pertaining to their relationship with the congregation, including priorities to be given in the use of their time and skill in relation to the goals and objectives set for the congregation's mission and the demands upon the ministry . . . .

(5) To consult on matters pertaining to pulpit supply, proposals for compensation, travel expense, vacation, health and life insurance, pension, housing (which may be a church-owned parsonage or housing allowance in lieu of parsonage if in compliance with the policy of the annual conference), and other practical matters affecting the work and families of the pastor and staff, and to make annual recommendations regarding such matters to the church council, reporting budget items to the committee on finance. The parsonage is to be mutually respected by the pastor's family as the property of the church and by the church as a place of privacy for the pastor's family. The chairperson of the committee on pastor-parish relations, the chairperson of the board of trustees, and the pastor shall make an annual review of the church-owned parsonage to assure proper maintenance. . . .

(10) To recommend to the church council, after consultation with the pastor, the professional and other

staff positions (whether employee or contract) needed to carry out the work of the church or charge. The committee and the pastor shall recommend to the church council a written statement of policy and procedures regarding the process for hiring, contracting, evaluating, promoting, retiring, and dismissing staff personnel who are not subject to episcopal appointments as ordained clergy. Until such a policy has been adopted, the committee and the pastor shall have the authority to hire, contract, evaluate, promote, retire, and dismiss nonappointed personnel. When persons are hired or contracted, consideration shall be given to the training qualifications and certification standards set forth by the general Church agency to which such positions are related. The committee shall further recommend to the church council a provision for adequate health and life insurance, pension benefits, and severance pay for all lay employees.

Pages 153-157

* Page references are to the Book of Discipline